IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 14946 of 2004(D)

PETITIONER:

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1. ABHILASHA T.V., HSST (PHYSICS - JR),
   T.M.HIGHER SECONDARY SCHOOL, VELLORA,
   KANNUR DISTRICT.

2. BINDU K.S., HSST (MATHEMATICS),
   P.K.S.HIGHER SECONDARY SCHOOL, KANJIRAMKULAM.

3. DEEPTHI MITHRA V.S., HSST(PHYSICS)
   P.K.S.HIGHER SECONDARY SCHOOL,
   KANJIRAMKULAM.

4. JAYASREE T., HSST (MATHEMATICS-JR),
   ST.JUDE'S HIGHER SECONDARY SCHOOL,
   VELLARIKUNDU, KASARAGODE DISTRICT.

5. M.R.MAYA, HSST (CHEMISTRY)
   K.P.M.HIGHER SECONDARY SCHOOL,
   CHERIYAVELINALLOOR, KOTTARAKKARA 691 516,
   KOLLAM DISTRICT.

6. REENA K.PILLAI,
   HSST (CHEMISTRY-JR), S.M.HIGHER SECONDARY
   SCHOOL, PATHARAM, KOLLAM DISTRICT.

7. R.PRIYA, HSST (PHYSICS),
   S.M.HIGHER SECONDARY SCHOOL, PATHARAM,
   KOLLAM DISTRICT.

8. BRONIA THOMAS, HSST (CHEMISTRY),
   SANTA CRUZ HIGHER SECONDARY SCHOOL,
   FORT KOCHI, ERNAKULAM DISTRICT.

9. SUBHADRA ANTHARAJANAM A.V.,
   HSST (CHEMISTRY), SNDP HIGHER SECONDARY SCHOOL,
   KILIROOR, KANJIRAM P.O., KOTTAYAM DISTRICT.

10. THERESSA MATHEW,

HSST (PHYSICS), SNDP HIGHER SECONDARY SCHOOL
KILIROOR, KANJIRAM P.O.,
KOTTAYAM DISTRICT.

11. RAJESH SOMAN, HSST (CHEMISTRY-JR),
SNDP HIGHER SECONDARY SCHOOL, KILIROOR,
KANJIRAM P.O., KOTTAYAM DISTRICT.

12. TRESA K.P., HSST (BOTANY - JR),
SANTA CRUZ HIGHER SECONDARY SCHOOL,
FORT COCHIN, ERNAKULAM DISTRICT.

13. ASHA ABRAHAM, HIGHER SECONDARY
SCHOOL TEACHER, ST.JOHN'S HIGHER SECONDARY
SCHOOL, KAVALANGAD.

14. SHILLY PAUL, HIGHER SECONDARY SCHOOL
TEACHER, ST.JOHN'S HIGHER SECONDARY SCHOOL,
KAVALANGAD.

15. BIJU PAUL, HIGHER SECONDARY SCHOOL
TEACHER, ST.JOHN'S HIGHER SECONDARY SCHOOL,
KAVALANGAD.

16. KRISHNAN NAMBOODIRI E.N.,
HIGHER SECONDARY SCHOOL TEACHER,
ST.JOHN'S HIGHER SECONDARY SCHOOL,
KAVALANGAD.

17. RAJANI P.R., HSST (COMMERCE),
SNDP HIGHER SECONDARY SCHOOL,
PALISSERY, POOVATHUSSERY P.O.,
THRISSUR DISTRICT.

18. U.PARAMESWARAN, HSST (COMMERCE -JR),
SNDP HIGHER SECONDARY SCHOOL, PALLISSERY,
POOVATHUSSERY P.O., THRISSUR DISTRICT.

19. K.C.VANAJA, HSST (ECONOMICS),
SNDP HIGHER SECONDARY SCHOOL, PALISSERY,
POOVATHUSSERY P.O., THRISSUR DISTRICT.

20. K.I.SREEJI, HSST (PHYSICS),
SNDP HIGHER SECONDARY SCHOOL,
PALISSERY, POOVATHUSSERY P.O.,
THRISSUR DISTRICT.

21. TIJOMON JOSEPH, HSST (PHYSICS),
M.K.M.HIGHER SECONDARY SCHOOL,
PIRAVOM, ERNAKULAM DISTRICT.

22. ANI KURIAN, HIGHER SECONDARY SCHOOL
TEACHER, MAR KOORILOS MEMORIAL HIGHER
SECONDARY SCHOOL, PATTIMATTOM, ERNAKULAM DISTRICT.

23. T.ANILKUMAR, HIGHER SECONDARY SCHOOL
TEACHER, SVPM SNDP HIGHER SECONDARY SCHOOL,
KAZHIBRAM P.O., EDAMUTTAM, THRISSUR DISTRICT.

24. ATLY V.K., HSST (ECONOMICS-JR),
MUSLIM HIGHER SECONDARY SCHOOL,
KANIYAPURAM.

25. C.SOMASEKHARAN NAIR
HSST (MATHEMATICS -JR), MUSLIM HIGHER SECONDARY
SCHOOL, KANIYAPURAM.

26. T.C.JOSEPH, HSST (ENGLISH),
T.I.HIGHER SECONDARY SCHOOL, NAIMARMOOLA,
KASARGOD DISTRICT.

27. A.MOHANAN, HSST (CHEMISTRY-JR),
T.I.HIGHER SECONDARY SCHOOL, NAIMARMOOLA,
KASARGODE DISTRICT.

28. C.PUSHPALATHA, HST (COMMERCE),
S.S.HIGHER SECONDARY SCHOOL, KATUKUKKE,
KASARGODE DISTRICT.

29. P.K.VANISHREE, HSST (ENGLISH),
S.S.HIGHER SECONDARY SCHOOL, KATTUKUKKE,
KASARGODE DISTRICT.

30. K.VANI, HSST (ECONOMICS),
S.S.HIGHER SECONDARY SCHOOL, KATUKUKKE,
KASARGODOE DISTRICT.

31. P.V.SAIMA, HSST (MATHS-JR),
B.A.R. HIGHER SECONDARY SCHOOL,
BOVIKAN, KASARGODE DISTRICT.

32. K.J.SHAJAN, HSST (MATHS - JR),
T.M.HIGHER SECONDARY SCHOOL, VELLORA P.O.,
KANNUR 670 306.

33. KAVITHA SANKAR E.M.,
HSST (PHYSICS - JR), ST.THERESE HIGHER
SECONDARY SCHOOL, SHORANUR,
PALAKKAD DISTRICT.

34. MANJU M.R., HSST (ENGLISH),
CHEMPAKASSERY HIGHER SECONDARY SCHOOL,
BHOOTHAKULAM.

BY ADV. SRI.BENOY THOMAS

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE SECONDARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF HIGHER SECONDARY EDUCATION, THIRUVANANTHAPURAM.

3. THE MANAGER, T.M.HIGHER SECONDARY SCHOOL, VELLORE, KANNUR DISTRICT.

4. THE MANAGER, P.K.S.HIGHER SECONDARY SCHOOL, KANJIRAMKULAM.

5. THE MANAGER, ST.JUDE'S HIGHER SECONDARY SCHOOL, VELLARIKUNDU, KASARAGODE DISTRICT.

6. THE MANAGER, K.P.M.HIGHER SECONDARY SCHOOL, CHERIYAVELINALLOOR, KOTTARAKARA -691 516.

7. THE MANAGER, S.M.HIGHER SECONDARY SCHOOL, PATHRAM, KALLAM DISTRICT.

8. THE MANAGER, SANTA CRUZ HIGHER SECONDARY SCHOOL, FORT KOCHI, ERNAKULAM DISTRICT.

9. THE MANAGER, SNDP HIGHER SECONDARY SCHOOL, KILIROOR, KANJIRAM P.O., KOTTAYAM DISTRICT.

10. THE MANATGER, ST.JOHN'S HIGHER SECONDARY SCHOOL, KAVALANGAD.

11. THE MANAGER, SNDP HIGHER SECONDARY SCHOOL, PALISSERY, POOVATHUSSERY P.O., THRISSUR DISTRICT.

12. THE MANAGER, M.K.M. HIGHER SECONDARY SCHOOL, PIRAVOM, ERNAKULAM DISTRICT.

13. THE MANAGER, MAR KOORILES MEMORIAL HIGHER SECONDARY SCHOOL, PATTIMATTOM, ERNAKULAM DISTRICT.

14. THE MANAGER, SVPM SNDP HIGHER SECONDARY SCHOOL, KAZHIMBRAM P.O., EDAMUTTAM, THRISSUR DISTRICT.

15. THE MANAGER, MUSLIM HIGHER SECONDARY SCHOOL, KANIYAPURAM.

16. THE MANAGER, T.I.HIGHER
SECONDARY SCHOOL, NAIMOOMOOLA,
KASARAGOD DISTRICT.

17. THE MANAGER, S.S.HIGHER SECONDARY
SCHOOL, KATUKUKKE, KASARAGODE DISTRICT.

18. THE MANAGER, B.A.R. HIGHER
SECONDARY SCHOOL, BOVIKAN, KASARAGODE DISTRICT.

19. THE MANAGER, ST.THERESA HIGHER
SECONDARY SCHOOL, SHORANUR,
PALAKKAD DISTRICT.

20. THE MANAGER, CHEMPAKASSERY HIGHER
SECONDARY SCHOOL, BHOOTHAKULAM.

BY ADV. SRI.N.N.SUGUNAPALAN
SRI.S.SUJIN
SRI.M.SASINDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, ALONG WITH RP NO. 709 OF 2006 RP NO. 710 OF 2006 RP NO. 705 OF 2006
RP NO. 708 OF 2006 RP NO. 730 OF 2006 WPC NO. 23465 OF 2005
THE COURT ON 23/01/2007 DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NOs.14946/2004 & 23465/2005

Dated this 23rd day of January, 2007

JUDGMENT

The petitioners in both these writ petitions are approved Higher Secondary School Teachers working in the respective schools shown against their addresses in the Writ Petition. All of them were appointed between 13.2.01 and 12.11.01. 13.2.01 is the date of expiry of the three months' specific ban imposed by the Government in **Dollichan**'s case [2001(1) SCC 151] in Aided Higher Secondary Schools to facilitate framing of recruitment rules and 12.11.05 is the date on which the recruitment rules are actually notified. All the writ petitioners were having prescribed educational qualifications at the time of their appointment but did not have SET. They claim that they were all appointed in the absence of SET qualified hands which was permissible by GO (MS) No.238/2000/G.Edn. dt.25.8.2000. A Division Bench of this Court in WA No.2425/02 and connected matters on 22.1.03 wherein some of the petitioners were also parties, directed the approving authority to clear the appointments made during the above period and further directed that persons appointed

without SET in the absence of SET qualified hands but possessing the other qualifications at the time of appointment will not be denied appointment. The Division Bench held that GO(MS)No.238/2000/G.Edn. dt.25.8.2000 was in force at the time of the appointments. Though the State went in appeal against the Division Bench judgment, the Special Leave Petition (SLP No.2224/03) was permitted to be withdrawn recording the statement of the Government that no review petition will be filed against the Division Bench judgment. Thus the Division Bench judgment has become final. Thereafter the Government issued GO(MS)No.199/2003/G.Edn. dt.24.7.03 in purported compliance of the judgment of the Division Bench. But while issuing GO (MS)No.199/03, the absence clause in the judgment in respect of SET was ignored by the Government and Clause 6(c) of the Government Order prescribed that persons who did not possess SET till the date of Ext.P4 i.e. 24.7.03 will be terminated. Thereafter such persons approached this Court challenging Clause 6(c) on the ground that the same is contrary to the judgment in WA No.2245/02. A single judge of this Court set aside Clause 6(c) of the Government Order and the judgment of the Single Bench was confirmed in appeal by a Division Bench in WA No.1927/04. It is submitted by the petitioners that persons

who were not having SET at all have been granted approval with effect from the date of appointment in compliance with the directions in WA No.2245/03 and WA No.1927/04. According to the petitioners their case is stronger. All of them have subsequently passed SET. The approving authority is invoking Clause 6(b) of GO(MS)No.199/03 and denying approval. According to the petitioners the above Clause is irrelevant in view of the finality attained in the judgments in WA No.2245/03 and WA No.1927/2004.

2. The prayers in the writ petitions are for quashing clauses (b) and (c) of G.O.(MS)No.199/2003/G.Edn. a declaration that the petitioners are entitled for approval of their appointment and salary admissible to the post of Higher Secondary School teachers with effect from their actual dates of appointments ignoring the contrary conditions contained in clause (b) of para 6 of the above mentioned G.O and also for consequential directions directing respondents 2 to approve the appointment of the petitioner with effect from their actual date of appointment and to disburse the salary admissible to the post of Higher Secondary School Teacher with effect from that date.

3. I had occasion to dispose of W.P.(C) No.25773/2004 and a batch of writ petition by a common judgment dated 10.2.2006. In those writ petitions also , the petitioners were HSST or HSST juniors circumstanced exactly similarly as the writ petitioners in these two writ petitioners. I directed the Director of Higher Secondary Education in those cases to pass orders on representation permitted to be filed in the light of the judgments in W.A. No.2445/2002 and W.A. No.1929/2004. Subsequently, I passed orders in I.A. 5481/2006 in W.P.(C) No.25773/2004 and clarified that in view of the judgment in W.A. No.2245/2003 and connected cases and the judgment of W.A. No.1927/2004, the petitioners in that case will be eligible for approval with effect from their date of appointment provided they were actually appointed in the absence of said qualified hands and provided also that they possessed all educational qualifications at the time of their appointment notwithstanding the circumstance that passed SET subsequent to their appointment. But the Government and the Director of Higher Secondary Education filed Review petition seeking review of that order of clarification. The writ petitioners also filed review petitions seeking that the writ petitions be allowed. I have today disposed of the review petitions in those cases by a

separate order. Noticing Annexures 2,3 and 4 which were produced by the writ petitioners I allowed the Review petition filed by the writ petitioners and dismissed the Review Petition filed by the Government and the Director of Higher Secondary Education. I have issued specific directions to the Director of Higher Secondary Education to grant approval to the appointment of the petitioners in those cases with effect from their respective dates of appointment provided certain conditions are satisfied. In view of the reason stated in the common order passed in those review petitions, these writ petitions are liable to be allowed. Both the writ petitions will stand allowed and there will be a direction to the Director of Higher Secondary Education to approve the appointment of the petitioners with effect from their actual dates of appointment provided the following conditions are satisfied:

i). The petitioners were appointed during the period from 13.2.2001 and 12.11.2001.

ii). At the times of appointment, the petitioners were having the required educational qualifications though they were not having SET.

Iii). The petitioners were appointed in the absence of SET qualified hands. Once it is seen that the above conditions are satisfied, the 2nd respondent shall issue orders granting approval as directed above. The petitioners will be eligible for all monetary benefits once orders of approval is issued. Prospective monetary benefits alone need be released by cash. The arrears can be paid either by giving credit to the Provident Fund Account of the petitioners or in the form of approved Government securities. The respondents will ensure that the above directions are complied with within two months of receiving a copy of this judgment.

PIUS C.KURIAKOSE
Judge

dpk/btt